PP

v.

PERIASAMY KANDASAMY

HIGH COURT MALAYA, MUAR
LAU BEE LAN J
[CRIMINAL TRIAL NO: 45-14-2003]
20 APRIL 2007

CRIMINAL PROCEDURE: *Plea of guilty - Mitigating factor - Accused pleaded guilty - Accused entitled to a discount of between one-quarter to one-third of usual sentence*

CRIMINAL PROCEDURE: *Sentencing - Plea of guilty as a mitigating factor - Offence under s. 304(b) of Penal Code - Accused pleaded guilty - Court to have regards to particular circumstances of each case - Accused sentenced to 6 years 6 months imprisonment from date of arrest*

The accused was charged under under s. 304(b) of the Penal Code for causing the death of one Subramaniam a/l Krishnan. The accused pleaded guilty to the charge and was convicted accordingly. In the plea in mitigation, it was submitted that the accused was a 1st offender and that he had pleaded guilty and the trial had not proceeded which saved the time of the court and the prosecution including the expenses in calling witnesses. At the time of the commission of the offence, the accused was 35 years of age and was now approaching 40. He was the fourth child in a family of 7 children and had been under the care of his mother since his father passed away. The accused worked as a lorry driver and supported his elderly mother of 70 years of age. He was engaged and planned to be married after serving sentence. He was also suffering from hepatitis B. The accused was remorseful for the offence committed and promised not to commit any other offence in the future. The learned DPP however submitted that public interest demanded for a deterrent sentence as the offence committed by the accused was serious; the nature of the injuries inflicted upon the deceased and the absence of extenuating circumstances during the commission of the offence.

Held:

(1) Since the accused had pleaded guilty he was entitled to a discount of between one-quarter to one-third of the sentence of the sentence which would have been imposed on him if he had not pleaded guilty. (para 8)

(2) Based on the authorities referred to, the range of imprisonment imposed in respect of an offence under s. 304(b) of the Penal Code where the accused has pleaded guilty was between 7 years to 9 years and for the same offence after trial was between 8 years to 10 years. After having due regard to some general principles and guidelines of sentencing, the court has ultimately to decide the appropriate sentence to be meted out in the particular circumstances of each case in relation to each individual criminal and with regard to each crime. (para 10)

(3) Having considered the mitigating factors pleaded, the seriousness of the offence, the consideration of the public interest and the injuries inflicted upon the deceased, the accused is sentenced to 6 years 6 months imprisonment with effect from the date of the arrest. (para 11)

Case(s) referred to:
Bachik Abdul Rahman v. PP [2004] 2 CLJ 572 CA ***(refd)***
Mohamed Abdullah Ang Swee Kang v. PP [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 SC ***(refd)***
Mohmad Jusoh Abdlullah & Ors v. PP [1947] 13 MLJ 130 ***(refd)***
PP lwn. Noor Hafidah Yeop Mat Isa & Yang Lain [2007] 7 CLJ 570 HC ***(refd)***
PP v. Doraigunaraju Krishnan [1993] 3 CLJ 664 HC ***(refd)***
PP v. Kang Chee Whei [2002] 8 CLJ 807 HC ***(refd)***
PP v. Loo Choon Fatt [1976] 2 MLJ 25 ***(refd)***
PP v. Muthu Subramaniam Seeniservai [2001] 7 CLJ 236 HC ***(refd)***
PP v. Nazarudin Ahmad & Ors [1993] 2 CLJ 543 HC ***(refd)***
PP v. Noor Hafidah Yeop Mat Isa & Yang Lain [2007] 7 CLJ 570 HC ***(refd)***
PP v. Ravindran & Ors [1992] 1 LNS 47 HC ***(refd)***
PP v. Rifkee Abu Bakar [2003] 8 CLJ 589 HC ***(refd)***
PP v. Saiful Afikin Mohd Firus [1996] 3 CLJ 629 HC ***(refd)***
PP v. Subramaniam Gopalan [1985] 2 CLJ 492; [1985] CLJ (Rep) 714 HC ***(refd)***
PP v. Teh Ah Cheng [1976] 1 LNS 116 HC ***(refd)***
PP v. Teo Heng Chye [1990] 1 CLJ 194; [1990] 3 CLJ (Rep) 904 HC ***(refd)***
R v. Ball [1951] 35 Criminal Appeal Report 164 ***(refd)***
Sau Soo Kim v. PP [1975] 1 LNS 158 FC ***(refd)***
Teo Siew Peng & Ors v. PP [1984] 1 LNS 71 HC ***(refd)***

Legislation referred to:
Penal Code, ss. 34, 302, 304(a), (b), 323

For the prosecution - Haslinda Abu Bakar (Nur Irmawatie Daud with her); DPPs
For the accused - Lawrnee Gnanapragasam (Mohd Radzi Yatiman with him); M/s Rahim & Lawrnee

Reported by Amutha Suppayah

JUDGMENT

Lau Bee Lan J:

[1] By way of background as of 12 November 2003 the accused, Periasamy a/l Kandasamy (2nd accused then) was originally charged together with Krishnan a/l Perian (1st accused) and Saravanavelu a/l Subramaniam (3rd accused) in the furtherance of the common intention of all of them to commit murder under s. 302 of the Penal Code read with s. 34 of the same. Thereafter on 9 September 2004 the learned DPP withdrew the charge against the 1st accused and he was acquitted and discharged whilst the 3rd accused was charged on an amended charge under s. 323 of the Penal Code for which he pleaded guilty and was sentenced to 1 year's imprisonment from the date of arrest. However the accused was solely charged on an amended charge under s. 302 of the Penal Code for which he claimed trial. Thereafter representation made by the learned counsel for the accused, Mr. Lawrnee Gnanapragasam, was accepted and on 19 April 2007 the learned DPP tendered an alternative charge under s. 304(b) of the Penal Code which reads as follows:

> Bahawa kamu pada 11 November 2002, jam lebih kurang 8.00 malam, ditepi Restoran Rahat, No. 126, Jalan Taman bintang Jaya, Jalan Segamat - Labis, di dalam Daerah Segamat, di dalam Negeri Johor Darul Takzim, telah didapati melakukan homisid salah tak terjumlah membunuh melalui perbuatan yang menyebabkan kematian Subramaniam a/l Krishnan (KPT: 680420-01-5615) dengan pengetahuan bahawa perbuatan itu mungkin menyebabkan kematian, tetapi dengan tiada apa-apa niat hendak menyebabkan kematian. Oleh yang demikian kamu telah melakukan satu kesalahan di bawah Seksyen 304(b) Kanun Keseksaan dan boleh dihukum di bawah Seksyen yang sama.

[2] The accused pleaded guilty to the alternative charge and understood the nature and consequences of his plea. He admitted the brief facts of the case (exh. PI2), First Information Report, Labis Police Report 1231/02 (exh. P13), the arrest report, Segamat Report 5378/02 (exh. P14), sketch plan, and key of the scene of incident, (exh. P15 and exh. P15 K), the post-mortem report (exh. P16), 16 photographs of the scene of incident and of the deceased during post-mortem (exh. P18 (1-16). The court thereafter found the accused guilty and convicted him accordingly.

[3] The salient facts of the case are as follows:

> Pada 11 November 2002, jam lebih kurang 8.00 malam, Subramaniam a/l Krishnan (Simati) bersama isterinya telah pergi ke Restoran Rahat, No. 126, Jalan Taman Bintang Jaya, Jalan Segamat - Labis, Segamat. Simati telah berhentikan keretanya di kawasan luar

restoran dan memanggil 2 orang pekerjanya yang berada di dalam restoran untuk balik bekerja di kedai.

Kedua-dua pekerja simati telah keluar dari restoran dan hendak bersama seorang lagi lelaki India. Apabila simati lihat kejadian ini, simati telah turun dari kereta dan berjalan menuju kepada pekerja-pekerjanya. Semasa simati berjalan ke arah pekerjanya, simati telah dipukul oleh tertuduh.

Dalam kejadian itu, tertuduh telah memukul simati beberapa kali dengan menggunakan kerusi besi yang terdapat di Restoran Rahat. Simati mendapat kecederaan-kecederaan di bahagian kepala. Simati telah terjatuh di tempat itu manakala tertuduh telah melarikan diri. Simati kemudiannya telah dibawa ke Hospital Segamat.

Isteri simati telah membuat laporan polis tentang kejadian ini pada 11 November 2002 iaitu Labis Report 1231/02 dan tertuduh telah ditangkap 12 November 2002. Semasa ditangkap, tertuduh tidak mengalami sebarang kecederaan.

Pihak polis telah datang ke tempat kejadian dan merampas kerusi besi yang digunakan dalam kejadian tersebut. Terdapat kesan darah pada hujung kaki kerusi best dan kesan darah ini telah dihantar ke Jabatan Kimia untuk analisa. Hasil analisa mengesahkan terdapat kumpulan darah "B" pada kesan darah tersebut, yang mana kemudiannya hasil siasatan polis mendapati la adalah sama dengan kumpulan darah simati.

Simati telah meninggal dunia pada 14 November 2002 dan bedah siasat telah dijalankan ke atas mayat simati oleh Dr. Mohammad Shafie bin Othman. Hasil bedah siasat mendapati bahawa simati mengalami 9 luka kecederaan di bahagian kepala dan badan.

Kerusi besi yang dirampas oleh polis telah ditunjukkan kepada Dr. Mohammad Shafie dan penelitian telah dibuat terhadap kerusi besi itu. Dr. Mohammad Shafie mengesahkan bahawa luka kecederaan pertama, kedua, ketiga dan kelima yang dinyatakan dalam laporan bedah siasat adalah kecederaan yang diakibatkan dengan pukulan kerusi besi. Objek yang sama juga boleh menyebabkan luka kecederaan yang lain.

Dr. Mohammad Shafie turut mengesahkan bahawa kecederaan yang membawa maut adalah luka kecederaan pertama dimana dibawah luka ini terdapat serpihan tulang patah terbenam (depressed fracture) dan di tepi rekahan, terdapat cebisan tisu otak yang keluar. Pada bahagian otak menunjukkan kesan luka terbenam berbentuk segiempat akibat kepatahan tulang terbenam. Menurut Dr. Mohammad Shafie, luka kecederaan pertama adalah disebabkan hentakan oleh bahagian hujung kaki kerusi best sebanyak lebih dari sekali. Hentakan kerusi besi inilah yang menyebabkan kepatahan tulang terbenam (depressed fracture) dibahagian tengkorak simati. Punca kematian adalah "kecederaan kepala akibat trauma tumpul.

[4] In his written plea in mitigation learned counsel for the accused submitted the following: that accused is a 1st offender; the accused has pleaded guilty to the alternative charge and the trial has not proceeded which saved the time of the court and the prosecution including the expenses in calling witnesses; at the time of the commission of the offence the accused was 35 years of age and is now approaching 40; he is the fourth child in a family of seven children; he has been under the care of his mother since his father passed away; the accused worked as a lorry driver at the time of the commission of the offence and would continue to do so after the completion of this case; the accused supported his elderly mother of 70 years of age; the accused was engaged and plan to be married after serving sentence; the accused suffered from hepatitis B as per a medical report tendered; the accused is remorseful for the offence committed and promises not to commit any other offence in the future. The learned counsel cited the cases of *PP v. Doraigunaraju a/l Krishnan* [1993] 3 CLJ 664 and *PP v. Muthu Subramaniam Seeniservai* [2001] 7 CLJ 236 and submitted that the range of imprisonment imposed for an offence under s. 304(b) of the Penal Code is between 2 1/2 to 5 years whilst for an offence under s. 304(a) of the Penal Code the range of imprisonment imposed is between eight to ten years referring to *PP v. Ravindran & Ors* [1992] 1 LNS 47. In the circumstances the learned counsel urged the court to give the accused opportunity to start life afresh by imposing an imprisonment sentence of between the range of three to six years.

[5] On the other hand the learned DPP strenuously opposed any show of leniency submitting basically that public interest demands for a deterrent sentence as the offence committed by the accused was serious; the nature of the injuries inflicted upon the deceased and the absence of extenuating circumstances during the commission of the offence. To support her contention for a deterrent sentence the learned DPP cited the following cases (1) *PP v. Noor Hafidah Yeop Mat Isa & Yang Lain* [2007] 7 CLJ 570; (2) *PP v. Kang Chee Whei* [2002] 8 CLJ 807; (3) *PP v. Subramaniam Gopalan* [1985] CLJ (Rep) 714; (4) *PP v. Teo Heng Chye* [1990] 1 CLJ 194; [1990] 3 CLJ (Rep) 904; (5) *PP v. Rifkee Abu Bakar* [2003] 8 CLJ 589.

[6] In considering what would be the appropriate sentence to be meted to the accused the court would have to bear in mind some pertinent principles of sentencing. First of all it is the paramount consideration of public interest contained in the oft cited passage of Hilbery J in the case in *R v. Ball* [1951] 35 Criminal Appeal Report 164. This element 20 has been consistently adopted by our courts for example in *PP v. Loo Choon Fatt* [1976] 2 MLJ 25, *PP v. Ravindran & Ors (supra), PP v. Teh Ah*

Cheng [1976] 1 LNS 116, *Teo Siew Peng & Ors. v. PP* [1984] 1 LNS 71 and *PP v. Nazarudin bin Ahmad & 2 Ors* [1993] 2 CLJ 543). His Lordship Hilbery J in *R v. Ball (supra)* stated:

> In deciding the appropriate sentence a court should always be guided by certain considerations. *The first and foremost is the public interest.* The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. *A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime* as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. *Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life.* The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. *Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the court has the right and the duty to decide whether to be lenient or severe.* (emphasis added).

[7] Further, in *Mohmad Jusoh Abdullah & Ors v. PP* [1947] 13 MLJ 130 the then Court of Appeal observed that the guidelines for imposing sentences should include consideration on the nature of the offence; the circumstances in which it was committed; the degree of deliberation shown by the offender; the provocation, if any received by the accused; the degree of violence involved and the antecedents, age and character of the accused (see *PP v. Subramaniam Gopalan* [1985] 2 CLJ 492; [1985] CLJ (Rep) 714).

[8] In the instant case it is not disputed the accused has pleaded guilty to the alternative charge and has therefore saved much of judicial time, prosecution's time and the expenses and inconvenience of calling witnesses following the principle propounded in the Federal Court case of *Sau Soo Kim v. PP* [1975] 1 LNS 158. Since the accused has pleaded guilty he is entitled to a discount of between one-quarter to one-third of the sentence which would have been imposed on him if not pleaded guilty following the principle enunciated in the Supreme Court case of *Mohamed Abdullah Ang Swee Kang v. PP* [1987] 2 CLJ 405; [1987] CLJ 209. In my view there is an absence of any five circumstances which would warrant me not to give any weight to the accused's guilty plea in the manner alluded to by the Court of Appeal in *Bachik Abdul Rahman v. PP* [2004] 2 CLJ 572 at p. 583 para f to p. 584 para a.

[9] As highlighted by the learned DPP, the court cannot ignore the fact that in the particular circumstances under which the offence was committed, the deceased sustained nine injuries on his head and body when the accused used the iron chair to assault the deceased; of significance as pointed out in the facts of the case is the 1st injury which proved to be fatal to the accused as confirmed by the postmortem report "luka kecederaan pertama di mana di bawah luka ini terdapat serpihan tulang patah terbenam (depressed fracture) dan ditepi rekahan, terdapat cebisan tisu otak yang keluar". I agree with the learned DPP that there are no extenuating circumstances in respect of this case. There is attempt by the learned counsel for the accused to rely on line 27 to line 33 of the cautioned statement of the accused to the effect:

> S: Apakah yang hendak kamu ceritakan kepada saya?
>
> J: Pada 11 November 2002 jam lebih kurang 7.30 malam saya telah sampai di kedai Kopi Bai, Labis. Saya sampai di sana saya ada nampak isteri Murli punya isteri angkat kayu mau pukul tak tahu siapa. Saya pun pergi kepada isteri Murli dan tarik dia punya dan bagi tahu jangan gaduh sebab ini adalah keluarga punya hal. Lepas itu saya tengok semua orang sudah lari dan apabila saya toleh ke belakang saya nampak Murli telah jatuh atas tanah dan saya bagi tahu kepada isterinya "Tengok, awak punya suami telah jatuh". Lepas itu dia baru pusing tengok dia punya lelaki dan dia angkat dia punya lelaki. Selepas itu saya terus pergi ke balai.

However the court is not giving any weight to this statement because there is no evidence of who Murli is since there is no mention of such a name in the facts of the case and would be inconsistent with the same.

[10] Based on the authorities referred to by the learned DPP it would appear the range of imprisonment imposed in respect of an offence under s. 304(b) of the Penal Code where the accused has pleaded guilty is between seven years to nine years (see *PP v. Subramaniam Gopalan (supra)* and (see *PP v. Kang Chee Wei (supra)*), and for the same offence after trial is between eight years to ten years (see *PP v. Rifkee Abu Bakar (supra))* and (see *PP v. Teo Heng Chye (supra))*. In *PP lwn. Noor Hafidah Yeop Mat Isa & Yang Lain)* [2007] 7 CLJ 570 at p. 580 to 582 in respect of an offence under s. 304 of the Penal Code the range of imprisonment varies from detention in Henry Gurney School (a juvenile) to 14 years subject to the caveat below (see the table of 14 cases in *PP Iwn. Noor Hafidah Yeop Mat Isa & Yang Lain (supra)*). It is be noted that save for the case of *PP v. Saiful Afikin Mohd Firus* [1996] 3 CLJ 629 wherein it is stated s. 304 of the Penal Code (1st limb), there is no specific mention under which limb of s. 304 the rest of the sentences were imposed and neither is there a distinction made as to whether the

accused pleaded guilty or after full trial). Finally at the end of the day after having due regard to some general principles and guidelines of sentencing, the court has ultimately to decide the appropriate sentence to be meted out in the particular circumstances of each case in relation to each individual criminal and with regard to each crime (see *R v. Ball (supra)*).

[11] Having considered the mitigating factors pleaded on behalf of the accused and undoubtedly the seriousness of the offence under s. 304(b) of the Penal Code, the consideration of the public interest, and the injuries inflicted upon the deceased, I sentence the accused to six years six months imprisonment with effect from the date of the arrest ie, 12 November 2002.

[12] The documentary exhibits are to be kept with the charge sheet. All other exhibits to the police, for disposal except for the medical report of the accused which is to be returned to him in the event there is no appeal.